



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

February 11, 2021

Cody Taylor  
WENY News  
115 Creamery Road  
Harford, NY 13835

**Re: Freedom of Information Act Request –EPA-R2-2021-002322  
Fee Waiver Determination**

Dear Mr. Taylor:

This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA), National FOIA Office (NFO) on February 1, 2021 in which you are seeking: “I am requesting access to the Storm Water permits, air permits, and SPDES permits for the Greenidge Generation power plant.”

You requested a waiver of fees to process your FOIA request. As a news media representative, you would not likely be charged for fees in processing your FOIA request, even without a fee waiver. Representatives of news media may only be charged for costs of duplication after 100 pages, and EPA is not likely to have duplication costs above the \$14 threshold because EPA discloses FOIA records electronically via FOIAonline.<sup>1</sup>

Nevertheless, you have requested a fee waiver and the NFO analyzed your fee waiver request under the applicable standards. Notably, the EPA presumes a representative of the news media satisfies the third factor of the public interest requirement—disclosure of the requested information will contribute to a public understanding of the subject-matter of the request. A representative of the news media must still explicitly address in the fee waiver justification statement the three other factors of the public interest requirement, as well as both factors of the non-commercial interest requirement. As explained below, your fee waiver application must be denied because it failed to address the required factors.

EPA regulations provide a mechanism for requesters to seek records responsive to a FOIA request “without charge or at a charge reduced below” the agency FOIA fee schedule when the NFO determines “based on all available information, that disclosure of the requested

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<sup>1</sup> See 40 C.F.R. § 2.107(c)(1)(iii) & (d)(4) (2018); *see also* Freedom of Information Act Regulations Update, 84 Fed. Reg. 30,028, 30,036 (June 26, 2019) (to be codified at 40 C.F.R. pt. 2).

information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” (public interest requirement) and “is not primarily in the commercial interest of the requester” (non-commercial interest requirement).<sup>2</sup>

To evaluate the public interest requirement, the EPA considers each of four factors: (1) the subject of the request; (2) the informative value of the information to be disclosed; (3) the contribution to an understanding of the subject by the public is likely to result from disclosure; and (4) the significance of the contribution to public understanding.<sup>3</sup>

To determine the non-commercial interest requirement, the EPA considers each of two factors: (1) the existence and magnitude of a commercial interest; and (2) the requester’s primary interest in the information disclosure.<sup>4</sup> If the EPA determines the requester has a commercial interest that is furthered by disclosure of the requested information and the commercial interest is primary to any specified public interest, the requester is not entitled to a waiver of fees.

Fee waiver requests must specifically address each, and all, of the factors.<sup>5</sup> If a requester’s written justification for a fee waiver fails to address or substantiate each of the factors discussed below, the EPA will deny the request for a fee waiver.<sup>6</sup> The NFO evaluated the information you provided in support of your request for a fee waiver and applicable EPA regulations.

In support of your request for a fee waiver, you provided the following justification: “By providing me with these documents it will help the public understand how environmental rules and regulations work as I will be publishing the information on a local news station.”

The rationale your provided, however, was of a conclusory nature. Specifically, this statement did not address or substantiate the required factors in enough detail to grant your fee waiver request. Therefore, your request for a fee waiver is denied because your justification failed to demonstrate either that the information disclosed in response to your request is likely to contribute significantly to public understanding of the operations or activities of the government, or you that your primary interest in the information is non-commercial. For these reasons, your request for a fee waiver is denied. However, for the reasons discussed earlier, EPA does not anticipate that there will be any charges associated with your request.

You may appeal this determination by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by mail to the EPA’s National FOIA Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2310A), Washington, DC 20460 or through FOIAonline if you are an account holder. If you are submitting your appeal by

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<sup>2</sup> Freedom of Information Act Regulations Update, 84 Fed. Reg. at 30,037-38.

<sup>3</sup> Freedom of Information Act Regulations Update, 84 Fed. Reg. at 30,037-38; *see also* 40 C.F.R. §§ 2.107(l)(2)(i)-(iv).

<sup>4</sup> Freedom of Information Act Regulations Update, 84 Fed. Reg. at 30,038; *see also* 40 C.F.R. §§ 2.107(l)(3)(i)-(ii).

<sup>5</sup> Freedom of Information Act Regulations Update, 84 Fed. Reg. at 30,038; *see also* 40 C.F.R. § 2.107(l)(5).

<sup>6</sup> *Id.*

hand delivery, courier service, or overnight delivery, you must address your correspondence to 1200 Pennsylvania Avenue, N.W., WJC-N Building, Room 7309C, Washington, DC 20460.

Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Should you choose to appeal this determination, please be sure to fully address all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(l), in your appeal.

If you need any further assistance or would like to discuss any aspect of your request, you may seek assistance from EPA's FOIA Public Liaison at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or call (202) 566-1667. You may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001; email: [ogis@nara.gov](mailto:ogis@nara.gov); telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769. For all media inquiries, please contact [press@epa.gov](mailto:press@epa.gov).

Sincerely,

Denise Walker  
Attorney-Adviser  
National FOIA Office